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FILED _____ ENTERED _____
LODGED _____ BY _____ DJ
MAR 4 2003
AT SEATTLE
CLERK U.S. DISTRICT C.
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TREVOR SCOTT GRIFFEY,

Plaintiff,

v.

THE CITY OF SEATTLE,
a municipal corporation,

and

DAN WHELAN, in his capacity as a
police officer for the City of Seattle and
as an individual,

Defendants.

CV03 0537L

COMPLAINT FOR DAMAGES

CV 03-0537 #1

COMPLAINT FOR DAMAGES - 1

MUENSTER & KOENIG
JOHN R. MUENSTER, INC., P.S.
999 THIRD AVE., SUITE 4100
SEATTLE, WASHINGTON 98104
(206) 467-7500
FAX: (206) 467-0101

INTRODUCTION

1. This is a civil action seeking damages against the above-named defendants. The civil claims include a common law tort cause of action, statutory causes of action, and offenses committed under color of law resulting in a deprivation of rights secured by the Constitution and laws of the United States of America.

JURISDICTION AND VENUE

2. This Court has personal and subject matter jurisdiction over plaintiff's federal civil rights claims under Title 42, United States Code, § 1983, and Title 28, United States Code, §§ 1331 and 1333(a)(3).

3. This Court has pendent jurisdiction over plaintiff's state law claim and over defendants as to said claim, pursuant to Title 28, United States Code, § 1337 (Judicial Improvements Act of 1990), Public Law No. 101-650, 104 Stat. 5089 (1990).

4. The acts and omissions complained of herein occurred in King County, Washington, and the defendants are residents and citizens of the State of Washington.

5. Plaintiff is a resident and citizen of the state of Washington

6. Venue in this Court is proper pursuant to Title 28, United States Code, § 1391.

PARTIES

7. Plaintiff Trevor Scott Griffey is a citizen of the United States and a citizen and resident of the state of Washington.

8. Defendant City of Seattle is a municipal corporation organized under the laws of the State of Washington. Defendant City of Seattle is sued directly under Title 42, United States Code, § 1983 as to the federal causes of action, and under the doctrine of *respondeat superior* as to the state law cause of action.

9. Defendant City of Seattle includes, as one of its agencies, the Seattle Police Department.

10. At all times material to this complaint, defendant Dan Whelan was a police officer employed by defendant City of Seattle. At all times material to this complaint, defendant Dan Whelan was an agent and employee of defendant City of Seattle and was acting within the scope of his employment with the City of Seattle, under color of the laws of the State of Washington.

11. Defendant Dan Whelan is sued in his individual capacity and in his official capacity as an agent and employee of defendant City of Seattle.

FACTUAL ALLEGATIONS

12. On or about August 25, 2001, a rally entitled "Reclaim the Streets" took place in downtown Seattle.

1
2 13. Defendant City of Seattle sent officers of the Seattle police department to
3 the downtown area. The officers patrolled the streets.

4 14. Defendant City of Seattle provided its police officers with what is believed
5 to be pepper spray to use against citizens in the downtown area.

6 15. Pepper spray is a dangerous chemical weapon.

7 16. Plaintiff Trevor Griffey stood on the sidewalk on Fifth Avenue between
8 Olive and Virginia Streets in downtown Seattle.

9 17. Plaintiff was on the scene on assignment for the *Seattle Weekly* covering the
10 rally.

11 18. Seattle police officers had formed a line on Fifth Avenue facing toward
12 various citizens who stood on the Fifth Avenue sidewalk.

13 19. Claimant observed Seattle police officer Dan Whelan walk onto the sidewalk
14 and punch a young woman in the face. Whelan then walked towards claimant. Claimant
15 told Whelan that he saw what Whelan did. Whelan pushed claimant and knocked him
16 down on the sidewalk on his back.

17 20. While plaintiff lay on his back on the sidewalk, Whelan sprayed chemical
18 spray on claimant's face and body, resulting in personal injury.

19 21. Claimant was neither arrested nor charged with any offense.

20 22. Neither defendant Whelan nor any of the other police officers present
21 provided or attempted to provide any first aid to plaintiff.

23. A civilian photographer videotaped the incident. Seattle police seized the videotape.

24. Plaintiff notified the Seattle Police Department Office of Professional Accountability of the incident. That office conducted an investigation. No discipline was recommended or imposed.

25. As a result of the acts and omissions of defendants, plaintiff suffered personal injuries.

FIRST CAUSE OF ACTION:
VIOLATION OF THE FIRST AMENDMENT

26. Plaintiff hereby incorporates and realleges as if fully set forth herein each and every allegation of paragraphs 1 through 25.

27. The acts and omissions of defendants herein were done under color of state law, custom or usage.

28. Plaintiff had a federally-protected right, under the freedom of speech, press and assembly provisions of the First Amendment to the United States Constitution, to be present in downtown Seattle and to observe the contacts between police officers and citizens during the Reclaim the Streets-related protests and gatherings.

29. The acts and omissions of defendants herein proximately caused the deprivation of the First Amendment rights of Trevor Griffey.

30. As a proximate result of the acts and omissions of defendants and
deprivation of plaintiff's First Amendment rights, plaintiff suffered personal injuries as set
forth hereinabove.

SECOND CAUSE OF ACTION:
VIOLATION OF THE FOURTH AMENDMENT PROHIBITION
AGAINST UNREASONABLE SEIZURES

31. Plaintiff hereby incorporates and realleges as if fully set forth herein each and every allegation of paragraphs 1 through 30.

32. The acts and omissions of defendants herein were done under color of state law, custom or usage.

33. Trevor Griffey was seized, for purposes of the Fourth Amendment to the United States Constitution, by the acts and omissions of defendants set forth herein.

34. Trevor Griffey had a federally-protected right, under the Fourth Amendment, not to be subjected to an unreasonable seizure.

35. The acts and omissions of defendants herein proximately caused the deprivation of the Fourth Amendment rights of Trevor Griffey.

36. As a proximate result of the acts and omissions of defendants and deprivation of plaintiff's Fourth Amendment rights, plaintiff suffered personal injuries as set forth hereinabove.

THIRD CAUSE OF ACTION:
VIOLATION OF FOURTH AMENDMENT
PROHIBITION AGAINST THE USE OF UNREASONABLE FORCE

37. Plaintiff hereby incorporates and realleges as if fully set forth herein each and every allegation of paragraphs 1 through 36.

38. The acts and omissions of defendants herein were done under color of state law, custom or usage.

39. Trevor Griffey was seized, for purposes of the Fourth Amendment to the United States Constitution, by the acts and omissions of defendants as set forth herein.

40. Trevor Griffey had a federally-protected right, under the Fourth Amendment, not to be subjected to the use of unreasonable force against his person.

41. The acts and omissions of defendants herein proximately caused the deprivation of the Fourth Amendment rights of Trevor Griffey

42. As a proximate result of the acts and omissions of defendants and the deprivation of plaintiff's Fourth Amendment rights, plaintiff suffered personal injuries as set forth hereinabove.

FOURTH CAUSE OF ACTION:
VIOLATION OF THE FOURTEENTH
AMENDMENT DUE PROCESS CLAUSE

43. Plaintiff hereby incorporates and realleges as if fully set forth herein each and every allegation of paragraphs 1 through 42.

44. The acts and omissions of defendants herein were performed under color of state law, custom or usage.

45. Trevor Griffey had federally-protected rights, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, to remain in a public place of his choice and the right to move from one place to another, in order to observe the actions of the police and the citizens in downtown Seattle.

46. The acts and omissions of defendants herein proximately caused the deprivation of plaintiff's Fourteenth Amendment rights.

47. As a proximate result of the acts and omissions of defendants, plaintiff suffered personal injuries as set forth hereinabove.

FIFTH CAUSE OF ACTION:
MUNICIPAL LIABILITY OF THE CITY OF SEATTLE

48. Plaintiff hereby incorporates and realleges as though fully set forth herein each and every allegation of paragraphs 1 through 47.

49. At all times material to this complaint, defendant City of Seattle, by and its chief of police, had in effect certain explicit and *de facto* policies, practices and customs which were applied to the treatment of civilians in downtown Seattle during the Reclaim the Streets protest, including the use of chemical weapons against innocent civilians such as plaintiff Trevor Griffey.

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2 50. For purposes of the incident described herein, it was the policy, custom and
3 practice of the City of Seattle to utilize unreasonable force in violation of the First, Fourth
4 and Fourteenth Amendment rights of the plaintiff, set forth hereinabove.

5 51. It was further the policy of the City of Seattle to approve, acquiesce,
6 condone and ratify the use of unreasonable force in violation of the First, Fourth and
7 Fourteenth Amendment rights of the plaintiff in the incident described hereinabove.

9 52. The policy, practice and custom of approving, acquiescing in, condoning
10 and/or ratifying the use of unreasonable force in violation of the First, Fourth and
11 Fourteenth Amendment rights of the plaintiff in the incident described herein was a
12 deliberate choice by defendant City of Seattle.

13 53. These policies, practices and customs were maintained with deliberate,
14 reckless and/or callous indifference to the constitutional rights of the plaintiff as set forth
15 hereinabove.

17 54. The above-described policies, practices and customs of defendant City of
18 Seattle proximately caused the deprivation of the First, Fourth and Fourteenth Amendment
19 rights of the plaintiff.

21 55. As a proximate result of the above-described policies, practices and customs
22 of defendant City of Seattle, and as a result of the deprivation of plaintiff's First, Fourth
23 and Fourteenth Amendment rights, plaintiff suffered personal injuries as set forth
24 hereinabove.

SIXTH CAUSE OF ACTION:
ASSAULT AND BATTERY

56. Plaintiff hereby incorporates and realleges as if fully set forth herein each and every allegation of paragraphs 1 through 55.

57. Defendants assaulted and battered plaintiff Trevor Griffey.

58. Defendant City of Seattle is liable for the actions of defendant Dan Whelan under the doctrine of *respondeat superior*.

59. As a direct, proximate and foreseeable result of the wrongful actions described hereinabove, plaintiff has been damaged in an amount in excess of the minimum jurisdiction of this Court.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief as follows:

Compensatory Damages: The defendants should be required to pay compensatory damages in an amount to be proven at trial.

Attorneys' Fees: The defendants should be required to pay the plaintiff's reasonable attorneys' fees and costs pursuant to Title 42, United States Code, § 1988.

Other Relief: The Court should grant the plaintiff such other and further relief as the Court deems just and equitable.

DATED this the 26 day of March, 2003.

Respectfully submitted,

MUENSTER & KOENIG

By: 
JOHN R. MUENSTER
WSBA No. 6237
Attorney at Law

Of Attorneys for Plaintiff Trevor Griffey

COMPLAINT FOR DAMAGES - 11

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CIVIL COVER SHEET

CV03 0537

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Trevor Scott Griffey

DEFENDANTS

City of Seattle; Dan Whelan

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF King
(EXCEPT IN U.S. PLAINTIFF CASES)

FILED

ENTERED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

John R. Muenster
Muenster & Koenig
999 - 3rd Ave., Suite 4100 Wells Fargo Center
Seattle, WA 98104
(206) 467-7500

CLERK'S OFFICE, COURT
WESTERN DISTRICT OF WASHINGTON

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT King
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX
FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State	<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input checked="" type="checkbox"/> 6

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) Title 42, United States Code, § 1983: Violation of First, Fourth and Fourteenth Amendments; state law tort claim of assault and battery

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 28 USC 157	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	12 USC 3410
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habens Corpus	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	FEDERAL TAX SUITS	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Other	<input type="checkbox"/> 871 IRS—Third Party	<input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 26 USC 7609	

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 another district (specify) 6 Multidistrict Litigation

Appeal to District

 7 Judge from Magistrate Judgment**VII. REQUESTED IN COMPLAINT:**CHECK IF THIS IS A CLASS ACTION
□ UNDER F.R.C.P. 23**DEMAND \$**Check YES only if demanded in complaint:
JURY DEMAND: YES NO**VIII. RELATED CASE(S)** (See instructions):
IF ANY

JUDGE

DOCKET NUMBER

DATE

March 3, 2003

SIGNATURE OF ATTORNEY OF RECORD

